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6 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

7 SHAWN ALLEN COTTRELL,

8 Plaintiff,

9 v.

10 NAPHCARE, INC. (contracted jail medical
11 provider), MARY JANE JOHNSON (medical
12 supervisor provider), JULIE HUTCHINSON
13 (medical jail provider M.D.), SYLVIE STACY
14 (Medical Director corporate NaphCare), JANE
DOE #1 (jail nurse), JANE DOE #2 (supervisor
medical at jail),

15 Defendants.

No.: 4:17-cv-05086-TOR

STIPULATED PROTECTIVE ORDER

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17 **I. PURPOSES AND LIMITATIONS**

18 Discovery in this action is likely to involve production of confidential, proprietary, or
19 private information for which special protection may be warranted. Accordingly, the parties
20 hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The
21 parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket
22 protection on all disclosures or responses to discovery, the protection it affords from public
23 disclosure and use extends only to the limited information or items that are entitled to
24 confidential treatment under the applicable legal principles, and it does not presumptively entitle
25 parties to file confidential information under seal.

II. "CONFIDENTIAL" MATERIAL

"Confidential" material shall include the following documents and tangible things

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3 produced or otherwise exchanged:

- 4 • Confidential information in Defendants' personnel files.
- 5 • Proprietary information in Defendants' policies and procedures.
- 6 • Records identifying non-party inmates and employees or containing sensitive or
- 7 privileged information.
- 8 • Medical, mental health, and social services records.

9 **III. SCOPE**

10 The protections conferred by this agreement cover not only confidential material (as
11 defined above), but also (1) any information copied or extracted from confidential material; (2)
12 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
13 conversations, or presentations by parties or their counsel that might reveal confidential material.
14 However, the protections conferred by this agreement do not cover information that is in the
15 public domain or becomes part of the public domain through trial or otherwise.

16 **IV. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

17 **1. Basic Principles.**

18 A receiving party may use confidential material that is disclosed or produced by another
19 party or by a non-party in connection with this case only for prosecuting, defending, or
20 attempting to settle this litigation. Confidential material may be disclosed only to the categories
21 of persons and under the conditions described in this agreement. Confidential material must be
22 stored and maintained by a receiving party at a location and in a secure manner that ensures that
23 access is limited to the persons authorized under this agreement.

24 **2. Disclosure of "CONFIDENTIAL" Information or Items.**

25 Unless otherwise ordered by the court or permitted in writing by the designating party, a
receiving party may disclose any confidential material only to:

- a. the receiving party's counsel of record in this action, as well as employees

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3 of counsel to whom it is reasonably necessary to disclose the information
4 for this litigation;

- 5 b. the receiving party or officers, directors, and employees (including in
6 house counsel) of the receiving party to whom disclosure is reasonably
7 necessary for this litigation, unless the parties agree that a particular
8 document or material produced is for Attorney's Eyes Only and is so
9 designated;
- 10 c. experts and consultants to whom disclosure is reasonably necessary for
11 this litigation;
- 12 d. the court, court personnel, and court reporters and their staff;
- 13 e. copy or imaging services retained by counsel to assist in the duplication of
14 confidential material, provided that counsel for the party retaining the
15 copy or imaging service instructs the service not to disclose any
16 confidential material to third parties and to immediately return all originals
17 and copies of any confidential material;
- 18 f. during their depositions, witnesses in the action to whom disclosure is
19 reasonably necessary unless otherwise agreed by the designating party or
20 ordered by the court. Pages of transcribed deposition testimony or exhibits
21 to depositions that reveal confidential material must be separately bound
22 by the court reporter and may not be disclosed to anyone except as
23 permitted under this agreement;
- 24 g. the author or recipient of a document containing the information or a
25 custodian or other person who otherwise possessed or knew the
information; and
- h. insurance carriers and their claims representatives, for the purpose of

analyzing and valuing the potential claims.

3. Filing Confidential Material.

Before filing confidential material or discussing or referencing such material in court filings, the filing party shall confer with the designating party to determine whether the designating party will remove the confidential designation, whether the document can be redacted, or whether a motion to seal or stipulation and proposed order is warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

V. DESIGNATING PROTECTED MATERIAL

1. Exercise of Restraint and Care in Designating Material for Protection.

Each party or non-party that designates information or items for protection under this agreement must take care to limit any such designation to specific material that qualifies under the appropriate standards. The designating party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify, so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this agreement.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to unnecessarily encumber or delay the case development process or to impose unnecessary expenses and burdens on other parties) expose the designating party to sanctions.

If it comes to a designating party's attention that information or items that it designated for protection do not qualify for protection, the designating party must promptly notify all other parties that it is withdrawing the mistaken designation.

2. Manner and Timing of Designations.

Except as otherwise provided in this agreement (see, *e.g.*, second paragraph of section

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3 5.2(a) below), or as otherwise stipulated or ordered, disclosure or discovery material that
4 qualifies for protection under this agreement must be clearly so designated before or when the
5 material is disclosed or produced.

6 (a) Information in documentary form: the designating party must affix the word
7 “CONFIDENTIAL” to each page that contains confidential material, including, but not limited
8 to, paper and electronic documents and deposition exhibits (but excluding transcripts of
9 depositions or other pretrial or trial proceedings). If only a portion or portions of the material on
10 a page qualifies for protection, the producing party also must clearly identify the protected
11 portion(s) (*e.g.*, by making appropriate markings in the margins).

12 (b) Testimony given in deposition or in other pretrial or trial proceedings: the parties
13 must identify on the record, during the deposition, hearing, or other proceeding, all protected
14 testimony, without prejudice to their right to so designate other testimony after reviewing the
15 transcript. Any party or non-party may, within fifteen days after receiving a deposition transcript,
16 designate portions of the transcript, or exhibits thereto, as confidential.

17 (c) Other tangible items: the producing party must affix in a prominent place on the
18 exterior of the container or containers in which the information or item is stored the word
19 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,
20 the producing party, to the extent practicable, shall identify the protected portion(s).

21 **3. Inadvertent Failures to Designate.**

22 If timely corrected, an inadvertent failure to designate qualified information or items does
23 not, standing alone, waive the designating party’s right to secure protection under this agreement
24 for such material. Upon timely correction of a designation, the receiving party must make
25 reasonable efforts to ensure that the material is treated in accordance with the provisions of this
agreement.

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3 **VI. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

4 **1. Timing of Challenges.**

5 Any party or non-party may challenge a designation of confidentiality at any time. Unless
6 a prompt challenge to a designating party's confidentiality designation is necessary to avoid
7 foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or
8 delay of the litigation, a party does not waive its right to challenge a confidentiality designation
9 by electing not to mount a challenge promptly after the original designation is disclosed.

10 **2. Meet and Confer.**

11 The parties must make every attempt to resolve any dispute regarding confidential
12 designations without court involvement. Any motion regarding confidential designations or for a
13 protective order must include a certification, in the motion or in a declaration or affidavit, that
14 the movant has engaged in a good faith meet and confer conference with other affected parties in
15 an effort to resolve the dispute without court action. The certification must list the date, manner,
16 and participants to the conference. A good faith effort to confer requires a face-to-face meeting
17 or a telephone conference.

18 **3. Judicial Intervention.**

19 If the parties cannot resolve a challenge without court intervention, the designating party
20 may file and serve a motion to retain confidentiality under Local Civil Rule 7 (and in compliance
21 with Local Civil Rule 5(g), if applicable). The burden of persuasion in any such motion shall be
22 on the designating party. Frivolous challenges, and those made for an improper purpose (*e.g.*, to
23 harass or impose unnecessary expenses and burdens on other parties) may expose the
24 challenging party to sanctions. All parties shall continue to maintain the material in question as
25 confidential for two weeks following the applicable meet and confer, or if the designating party
files a motion within two week of the meet and confer, then until the court rules on the challenge.

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3 **VII. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**
4 **IN OTHER LITIGATION**

5 If a party is served with a subpoena or a court order issued in other litigation that compels
6 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that
7 party must:

8 (a) promptly notify the designating party in writing and include a copy of the subpoena or
9 court order;

10 (b) promptly notify in writing the party who caused the subpoena or order to issue in the
11 other litigation that some or all of the material covered by the subpoena or order is subject to this
12 agreement. Such notification shall include a copy of this agreement; and

13 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
14 designating party whose confidential material may be affected.

15 **VIII. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

16 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
17 material to any person or in any circumstance not authorized under this agreement, the receiving
18 party must immediately (a) notify in writing the designating party of the unauthorized
19 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,
20 and (c) inform the person or persons to whom unauthorized disclosures were made of all the
21 terms of this agreement.

22 **IX. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
23 **PROTECTED MATERIAL**

24 When a producing party gives notice to receiving parties that certain inadvertently
25 produced material is subject to a claim of privilege or other protection, the obligations of the
receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
provision is not intended to modify whatever procedure may be established in an e-discovery
order or agreement that provides for production without prior privilege review. Parties shall

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3 confer on an appropriate non-waiver order under Fed. R. Evid. 502.

4 **X. NON TERMINATION AND RETURN OF DOCUMENTS**

5 Within 60 days after the termination of this action, including all appeals, each receiving
6 party must return all confidential material to the producing party, including all copies, extracts
7 and summaries thereof or destroy them. Notwithstanding this provision, counsel are entitled to
8 retain one archival copy of all documents filed with the court, trial, deposition, and hearing
9 transcripts, correspondence, deposition and trial exhibits, expert reports, attorney work product,
10 and consultant and expert work product, even if such materials contain confidential material.
11 The confidentiality obligations imposed by this agreement shall remain in effect until a
12 designating party agrees otherwise in writing or a court orders otherwise.

13 **PRESENTED BY:**

14 WILLIAMS, KASTNER, GREENE &
15 MARKLEY

16 _____
17 Shawn Allen Cottrell
18 Plaintiff *Pro Se*
19 Prisoner ID No. 773803
20 Coyote Ridge Corrections Center
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24 /s/ Heidi L. Mandt
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*Attorneys for Defendants NaphCare, Inc.,
Mary Jane Johnson, Julie Hutchinson, and
Sylvie Stacy*

26 IT IS SO ORDERED.

27 Dated June 28, 2018.



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THOMAS O. RICE
Chief United States District Judge